



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-37

FACTS:

You are a member of the General Court. It is traditional for members of the General Court, particularly those legislators whose districts are not within close geographical proximity to the State House, to establish offices in the district which they represent. The purpose of a district office is to provide easier access for a legislator's constituents so that they may bring their problems to a legislator's office without having to travel to Boston. The Legislature has not provided any funding for district offices.^{1/} Some legislators hold office hours in the Town halls within their district, or establish district offices in their homes or place of business.

You question whether a legislator may accept free or discounted office space for a district office or office furnishings and equipment from a donor who may be a political subdivision of the Commonwealth, a business or real estate venture with which the legislator is associated, or a constituent. The donor of the space or discount is aware of the legislator's status and may be interested in establishing good will with the legislator.

QUESTIONS:

1. Does G.L. c. 268A permit a legislator to accept free or discounted office space from an individual or organization who is making the offer as a gesture of goodwill?
2. Does G.L. c. 268A permit a legislator to use a district office for campaign activities?

ANSWERS:

1. No.
2. Use of a legislator's district office for campaign purposes raises issues under G.L. c. 268A, §23(b)(2), but in light of the recent enactment of St. 1992, c. 133, §79 which amends G.L. c. 55, the Commission will defer to the Office of Campaign and Political Finance initially to address this question.

DISCUSSION:

1. Acceptance of Discounted Office Space and Furnishings

As a member of the General Court, you are a state employee for purposes of the conflict law. G.L. c. 268A, §1(q). G.L. c. 268A, §3(b) prohibits a state employee from accepting anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him. Anything with a value of \$50 or more is considered to be of "substantial value" for purposes of §3.^{2/}

For §3 purposes it is unnecessary to prove that the gratuity is given for some specific identifiable act which was performed or will be performed. A donor has an interest in business before the Legislature if "the giver has any interest (other than the general one shared with other citizens) in any past, present, or future legislative act, including a bill, an appropriation, or a constituent service: thus, motives for giving include expressing gratitude for past acts or engendering future good will." *EC-COI-92-2* (legislator's defense committee prohibited by §3 from soliciting those with interest in legislative business under §3). See *In re Ackerley*, 1991 SEC 508; *Public Enforcement Letter 88-2* (senator violated §3 by accepting rifle as gesture of good will); *EC-COI-85-42* (state employee prohibited from accepting discount mortgage). As the Commission has stated,

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may simply be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obliged to do—a good job. *In re Michael*, 1981 SEC 59, 68

The Commission has identified a narrow exemption to §3 where a donor provides a gift to the agency, which is not targeted directly to a particular public employee. *See EC-COI-89-23* (software loaned to the agency); *89-3* (actuarial services provided to agency on pro bono basis); *84-114* (art work provided to agency); *83-110* (computers loaned to joint Legislative Committee for its work). In each of these cases, the gift was donated, not for the personal use of an individual, but for the use of an entire agency. Further, use of the gift was subject to the control and oversight of the agency, thus dispelling an appearance that the donor was attempting to gain the goodwill of any particular employee. *See EC-COI-87-38*.

Applying these precedents to your situation we conclude that §3 prohibits acceptance of free or discounted office space and furnishings from an individual or a private or public entity who has an interest in legislative business as defined above. *See EC-COI-84-14* (car purchase discount); *85-42* (state employee prohibited by §3 from accepting offer of discount mortgage from individual where employee could use authority to affect donor). We also conclude that the circumstances which you present do not fall within the exemption permitting the acceptance of gifts to an agency. We find that the relevant agency for §3 purposes is not the office of the individual legislator, but rather the General Court. *See EC-COI-84-67* (for §4 purposes agency in which consultant to joint legislative committee serving is General Court). The definition of “state agency” in G.L. c. 268A, §1(p) expressly includes the legislative department. Unlike our agency gift cases, this offer of free or discounted office space and furnishings was not made to the General Court (or even to a branch of the Legislature), is targeted to benefit a particular legislator, and is not subject to control or oversight of the General Court. Compare G.L. c. 23A, §8 (Massachusetts Office of Business Development may accept gifts but money to be held in trust by Secretary of Economic Affairs; G.L. c. 6A, §6 (Secretary of Public Safety may accept gifts but gifts subject to regulation by Secretary of Administration and Finance.^{3/} Such an offer would derive to your personal benefit because, absent the offer, you would be required to pay personally for the office or use campaign funds to pay for the office. We note that the Legislature impliedly recognized that district offices, in part, serve each Legislator's personal political interests when it enacted St. 1992, c. 133, §379, permitting members of the Legislature to use campaign funds to open and maintain a district office.

We note that our conclusion would be different if the Legislature enacted a statute permitting the establishment of district offices and establishing guidelines for financing such offices. *See, e.g.,* 2 USC §59 (permitting the Sergeant at Arms to acquire office space for each U.S. Senator in state which they represent and establishing maximum size and rental for each office); House Bill No. 5676, §§8,9 (May 1992) (permitting members of General Court to enter leases with state agencies or cities and towns for district offices). If the Legislature enacted such a statute, the arrangement with a public entity or the establishment of, and guidelines for, a district office would be “as provided for by law for the proper discharge of official duties” and would not violate §3 or any other provision of G.L. c. 268A. *See e.g., EC-COI-92-20; 92-10*. We do not find that St. 1992, c. 133, §379 provides the necessary express authorization. This legislation concerns only the permissible uses of campaign funds.

2. Use of District Office Space for Campaign Purposes

G.L. c. 268A, §23(b)(2) provides that no public employee may use or attempt to use his official position to secure unwarranted privileges of substantial value for himself or others. The Commission has consistently held that this section prohibits a state official from using his state position, state time and state resources, such as staff and equipment for campaign purposes. *See EC-COI-92-12; 92-5* (use of state seal on campaign literature prohibited); *90-9; 85-29* (student intern in legislative office prohibited from doing tasks primarily benefitting re-election effort); *82-112* (state representative prohibited from using word processor in office for personal or campaign purposes even though representative personally leased the equipment). Accordingly, a legislator may not use his state house office or equipment for campaign purposes. A legislator may not use his district office and

equipment for campaign purposes if the office or equipment is funded by the Commonwealth or located in a state building. *See Commission Advisory No. 4 (Political Activity) (1992).*

However, the Commission has indicated that if a statute expressly authorizes state time or state resources for a particular purpose then such use would not be unwarranted. *See EC-COI-92-28; 91-13; 84-128.* The Legislature has recently enacted legislation which appears to permit the use of campaign funds for expenses relating to the provision of constituent services or to the opening and maintaining of a district office. G.L. c. 55, §6, §5, inserted by St. 1992, c. 133, §379. Although your question raises issues under §23(b)(2), it also raises issues under G.L. c. 55, the campaign finance law. Any interpretation concerning the scope of G.L. c. 55 (and recent amendments to c. 55) is within the jurisdiction of the Office of Campaign and Political Finance (OCPF). We find it advisable to permit OCPF initially to address your question in light of the recent enactment of St. 1992, c. 133, §379.

DATE AUTHORIZED: November 5, 1992

¹Recent legislation appears to permit a legislator to use campaign funds to provide constituent services or to open and maintain a district office. St. 1992, c. 133, §379, amending G.L. c. 55, §6.

²For purposes of this opinion we assume that the substantial value requirement is met.

³Because of the Commission's conclusion that the proposed arrangements are prohibited by §3(b), it is unnecessary to consider whether it also raises serious questions under G.L. c.268A, §23(b)(2) which prohibits a state employee from using his official position to secure an unwarranted privilege for himself or others and §23(b)(3) which prohibits a state employee from, by his conduct, giving reasonable basis for the impression that any person can improperly influence or unduly enjoy his favor in the performance of his official duty, or that he is unduly affected by the kinship, rank, position or influence of any party or person. Issues are raised under §23 when a public employee receives a discount or a benefit which is provided solely because the recipient is a public official, is not available to other public and private individuals, is not expressly authorized by statute, or made available by common industry wide practice to all employees of a participating organization. *See EC-COI-91-13; 87-37; 92-17; 86-14.*